



**THE PORT
OF LOS ANGELES**
Executive Director's
Report to the

Board of Harbor Commissioners

DATE: OCTOBER 31, 2012

FROM: REAL ESTATE

**SUBJECT: RESOLUTION NO. _____ - PERMIT TERMINATION AND
MUTUAL RELEASE AGREEMENT TO PERMIT NO. 702 AND
REVOCABLE PERMIT NO. 96-44 WITH DEL MONTE CORPORATION
AND PROPOSED SUCCESSOR REVOCABLE PERMIT NO. 12-03**

SUMMARY:

Permit No. 702 (P702) grants Del Monte Corporation (Del Monte) use of City of Los Angeles Harbor Department (Harbor Department) properties at 1054 Ways Street and 212 Terminal Way on Terminal Island for the construction, operation, and maintenance of a fish and pet food processing and canning facility, and related purposes. Under the terms of P702, Del Monte has been paying the 150 percent holdover rate since the permit expired on May 6, 2006.

Revocable Permit No. 96-44 (RP 96-44) grants Del Monte use of Harbor Department property on Earle Street on Terminal Island for the construction, operation, and maintenance of employee parking lots. RP 96-44 requires a 30-day notification for termination.

Del Monte ceased its fish processing and canning operations and vacated the related portions of the premises in September 2010. The terms of P702 and RP 12-03 require Del Monte to demolish all non-Harbor Department owned improvements and restore the premises to an acceptable condition. However, portions of the premises are eligible for listing under the National Register of Historic Places according to the 2011 Built Environment Evaluation Report for Properties on Terminal Island, which was completed as part of the Terminal Island Land Use Plan. In order to allow Del Monte to terminate P702 and RP 96-44, the terms of the proposed Permit Termination and Mutual Release Agreement terminates P702 and RP 96-44, and allows Del Monte to return the subject premises without requiring demolition, restoration, or remediation of the vacated premises, as required by the permits in exchange for payment (Restoration Fee) of the estimated amount required to demolish, restore, and remediate the premises. The remaining occupied portions under P702 and RP 96-44 will be under successor Revocable Permit No. 12-03 (RP 12-03).

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Approve the proposed Permit Termination and Mutual Release Agreement with Del Monte Corporation;
2. Approve successor Revocable Permit No. 12-03 with Del Monte Corporation;

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3. Authorize the Executive Director to execute and the Board Secretary to attest to the Permit Termination and Mutual Release Agreement;
4. Authorize the Executive Director to execute and the Board Secretary to attest to Revocable Permit No. 12-03; and
5. Adopt Resolution No. _____.

DISCUSSION:

Background and Need – P702 became effective on May 6, 1991, for a term of 15 years. P702 grants Del Monte use of approximately 27.8 acres of Harbor Department property at 1054 Ways Street, Terminal Island. P702 expired on May 5, 2006 and is currently in holdover status. The current holdover compensation for P702 is \$2,123,446 annually.

RP 96-44 became effective on December 4, 1996 and requires a 30-day notice for cancellation. RP 96-44 grants Del Monte use of approximately 2.1 acres of Harbor Department property on Terminal Island. The current compensation for RP 96-44 is \$12,775 per month, or \$153,300 annually.

Del Monte is obligated under the terms of the permits to, among other things, remove the structures and improvements not owned by the Harbor Department and restore and remediate the premises. Due to the lengthy review process, which includes the determination of future uses for the potentially historic Del Monte buildings, it is recommended that Del Monte be allowed to provide the Restoration Fee (\$3,222,493) and be released from its restoration obligations for the vacated premises under the permits. This will enable the Harbor Department to accept the return of the premises from Del Monte and defer the necessary environmental review including any historic re-use of the premises or any portion of the premises.

When it is determined what is to be done with the subject premises, the Harbor Department will have the Restoration Fee to use as it determines is needed, including but not limited to, demolition, restoration, remediation and any historic re-use of any buildings or any portion of the premises. After payment of the Restoration Fee, Del Monte is released from the restoration obligations under the permits, and there are no further accountings and/or any further action or responsibility regarding the Restoration Fee, and both parties are released from their obligations under the permits.

The Restoration Fee is based on the estimated cost for demolition, remediation, restoration, grading, environmental assessment, and associated administrative costs, as determined by the Harbor Department's Engineering and Environmental Management staff. This is consistent with the terms of the September 2011 agreement between the Harbor Department and Tri-Union Seafoods, LLC dba Chicken of the Sea International (COSI), whereby the Harbor Department accepted a Restoration Fee from COSI in lieu of having the improvements demolished and the site restored.

Under proposed RP 12-03 (Transmittal 2), Del Monte will continue to maintain and operate its pet food processing facility and be allowed to continue to sublease a portion of the remaining premises to the Ardagh Group, a metal packaging company. Ardagh, previously known as Impress Metal Package Holdings, was granted permission in

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Board Order No. 6429 to sublease the space from Del Monte. It is proposed that compensation for RP 12-03 be set at \$954,888 annually (payable at \$79,574 per month), based on the Harbor Department receiving a 10 percent annual rate of return on a land value of \$22 per square foot (s.f.). The proposed \$22 per s.f. per year land rent for 434,040 s.f. of land (Transmittal 3) is consistent with market rent in the San Pedro area.

The Environmental Management Division, along with Del Monte's environmental consultants, conducted separate environmental assessments of the vacated premises; the assessments determined that there are no existing remediation issues.

Permit Termination and Mutual Release Agreement (Transmittal 1) – The proposed agreement provides that:

- 1) Del Monte will pay the Restoration Fee of \$3,222,493 to the Harbor Department;
- 2) \$159,148 of the rent deposit previously received for P702 will be used as a security deposit for RP 12-03;
- 3) Del Monte's obligation to pay monthly compensation for the terminated portion of the premises will be effective until the date the Harbor Department receives the Permit Termination Agreement executed by Del Monte, and the required \$3,222,493 Restoration Fee is deposited into an escrow account (both of which have now occurred). Monthly compensation of \$79,574 for the remaining premises will continue under proposed RP 12-03;
- 4) Del Monte releases the Harbor Department from any and all obligations arising under or out of the terminated portions of the premises of P702 and RP 96-44;
- 5) The Harbor Department releases Del Monte from any and all obligations arising under or out of the terminated portion of the premises of P702 and RP 96-44;
- 6) There will be no accountings, refunds, requests for additional funds and/or further action or responsibility regarding the Restoration Fee after payment is made; and
- 7) Termination of P702 and RP 96-44 will occur upon execution of the Permit Termination and Mutual Release Agreement and RP 12-03 by the Executive Director of the Harbor Department and receipt of the Restoration Fee from escrow.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a Permit Termination and Mutual Release Agreement with Del Monte that would allow them relief from the demolition and restoration obligations of P702 and RP 96-44 with payment of a Restoration Fee and the approval of RP 12-03 to allow for continued operation of remaining occupied portions of the premises. The Restoration Fee is equivalent to the estimated amount necessary to cover the cost of future demolition, restoration, and environmental analysis of the site. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

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ECONOMIC BENEFITS:

This Board action will have no employment impact.

FINANCIAL IMPACT:

The termination of P702 and RP 96-44 will result in a decrease of \$1,321,878 in the Harbor Department's annual revenues. Moreover, termination of P702 and RP 96-44 will result in the Harbor Department taking control of the subject premises (not included in proposed successor RP 12-03) and will result in the Harbor Department receiving a lump sum payment of \$3,222,493 from Del Monte in lieu of Del Monte restoring the premises, as required by P702.

Approval of proposed RP 12-03 will result in the Harbor Department receiving \$954,888 in annual compensation. Proposed RP 12-03 also includes an annual Consumer Price Index adjustment provision. The compensation terms of proposed RP 12-03 conform to the Board's 10 percent rate of return policy on land.

CITY ATTORNEY:

The Office of the City Attorney has approved the Permit Termination and Mutual Release Agreement and RP 12-03 as to form and legality.

TRANSMITTALS:


- 1. Permit Termination and Mutual Release Agreement
- 2. Successor Revocable Permit No. 12-03
- 3. Aerial Site Map

FIS Approval:  (initials)

CA Approval:  (initials)


For JACK C. HEDGE
Director of Real Estate


For KATHRYN McDERMOTT
Deputy Executive Director

APPROVED:

GERALDINE KNATZ, Ph.D.
Executive Director